



Paper No. 4

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins CO 80527-2400

COPY MAILED**JUL 17 2002****OFFICE OF PETITIONS**

In re Application of
Vincent et al.
Application No. 10/016,560
Filed: October 30, 2001
Attorney Docket No. 10005742-1

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: DECISION DISMISSING
: PETITION
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This is a decision on the petition filed March 21, 2002, requesting that the above-identified application be accorded a filing date of October 30, 2001, with page 5 of the specification as a part of the original disclosure.

The petition is dismissed.

The application was filed on October 30, 2001. However, on January 23, 2002, the Office of Initial Patent Examination mailed a Notice of Omitted Item(s) in a Nonprovisional Application, stating that the application had been accorded a filing date of October 30, 2001; however, page 5 of the specification appeared to have been omitted.

In response, on March 21, 2001, applicants filed, inter alia, the present petition and a copy of page 5 of the specification. Applicants admit that page 5 of the specification was not submitted with the original application papers. However, applicants argue that the omitted page 5 does not contain any new matter, and therefore, should be accorded a filing date of October 30, 2001.

Whether page 5 of the specification, submitted on March 21, 2002, contains new matter is not the issue. Either page 5 was present in the United States Patent and Trademark Office on the filing date of the application or it was not. Because page 5 was not present on October 30, 2001, it cannot be considered a part of the original disclosure of the application. Therefore, the application cannot be accorded the filing date of October 30, 2001, with page 5 of the specification as a part of the original disclosure. The issue of new matter is one appropriately addressed by the primary examiner during prosecution of the application after the filing date of the application has been determined.

Since applicants seek to add page 5 of the specification to the above-identified application on the basis that the page does not contain new matter, no petition is necessary for that purpose. New pages of specification may be entered by the primary examiner without a petition so long as the pages contain no new matter.

See MPEP § 608.02(a). The appropriate procedure is by way of amendment requesting the entry of page 5. Any such amendment should be filed prior to the first action on the merits and will be considered by the primary examiner.

The petition fee will not be refunded because the petition was not necessitated by any error on the part of the Office.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of October 30, 2001, using pages 1-4 and 5-27 of the specification filed on that date.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 306-5589.

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